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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	CC Docket No. 96-149
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

The weight of the initial comments supports MCI's view that the Commission's proposals in the NPRM generally reflect the language and intent of the separation and nondiscrimination safeguards in the new Sections 271 and 272 of the Act. The LECs' interpretations of those sections, however, would effectively gut the crucial safeguards mandated by Congress.

Most parties agree with MCI that although interLATA telecommunications services previously authorized by the Consent Decree Court are exempt from the separation requirements of Section 272, previously authorized interLATA information services and manufacturing are required by Section 272(h) to come into compliance within one year. The BOCs' arguments to the contrary misconstrue the plain language of the statute. MCI also demonstrated the need for safeguards for BOC provision of incidental interLATA services. The BOCs' argument that these services are shielded from any new regulations ignores the plain language of Section 271(h) as well as of Section 601(c)(1) of the 1996 Act. In addition, the Commission's regulations must take pending mergers and BOC joint ventures into account. A merger partner or joint venturer should be required to provide any facilities or services used by its partner or the partner's interLATA affiliate at arm's length.

Subjecting both in-region and out-of-region interLATA information services to the requirements of Section 272 is supported by the language of the statute. The BOCs' argument that information services are interLATA only if there is an

interLATA transmission link, other than to a database or other processor, as a component of the service is contrary to relevant case law. In addition, contrary to the BOCs' arguments, telemessaging fits easily into the definition of "information services."

While the development of local competition might make structural separation unnecessary for information services at some point, this will not occur in the foreseeable future. Given the Commission's unsuccessful attempts to justify elimination of the structural separation requirements for BOC enhanced services, the Commission should fold the Computer III Further Remand Proceeding into this docket and establish a consistent set of rules for all BOC information services, both intraLATA and interLATA, in order to minimize gaming of the regulations on definitional pretexts.

Contrary to the LECs' claim that the Commission need not determine what it means for the interLATA affiliate to "operate independently" from the BOC, as required by Section 272(b)(1), such clarification is essential. The Commission should define that term as mandating physical, operational and administrative separation of the BOC and its interLATA affiliate. The Commission should also clarify that the requirement of separate officers, directors and employees in Section 272(b)(3) can only be fully implemented if all shared services are prohibited.

The LECs' interpretations of the nondiscrimination provisions of Section 272(c) and (e) demonstrate that regulations implementing those sections are urgently needed. For example, the LECs resist being required to provide network services or facilities to other entities that would provide the same functional outcome as services or facilities provided to their own affiliates even if that means having to provide something technically different to accommodate different needs. Requiring identical functional outcomes is absolutely necessary for a meaningful nondiscrimination regime, as shown by the sad history of the CEI/ONA requirements. Moreover, the BOCs' argument that the nondiscrimination requirements of Section 272 incorporate a reasonableness standard as in Section 202(a) ignores the fact that the language of 272(c) and (e) does not use the terms "unjust" or "unreasonable" as the language of Section 202(a) does.

Similarly, the variations among the commenting parties as to how to apply the joint marketing provisions of Sections 271 and 272 shows that implementing regulations are necessary. The joint marketing that is prohibited to IXCs prior to BOC entry into in-region interLATA service should refer only to those activities that involve the bundling of local and interLATA services in an offering for a single price or product.

The Commission should adopt its tentative conclusion to shift the burden of proof to the BOC in a complaint case brought

under Section 271(d)(6) once a prima facie case of violation of the conditions for in-region approval has been made. The BOC is the party with most, if not all, of the relevant information required to decide the complaint. Under these circumstances, there is nothing unfair or violative of due process in shifting the burden to the BOC. The BOCs' predictions that this will result in a flood of frivolous complaints is insupportable, since, if a complainant cannot make out a prima facie case of violation, it will be dismissed.

The initial comments demonstrate the BOCs' continuing local bottleneck power and ability and incentive to exploit that dominance in the in-region interLATA market by raising competitors' costs through the imposition of excessive access charges. There are no current safeguards or other regulatory constraints, including price cap regulation, that can restrain this abuse of the BOCs' bottleneck power. The charging of excessive access rates allows the RBOCs to impose a monopoly-based price squeeze on their IXC competitors, who must pay the excessive tariffed rate, while the RBOCs face only the economic cost of access.

The Commission must therefore take steps to enforce both its long-standing imputation rule, and the imputation requirement of Section 272(e)(3). The Commission must require the BOC affiliates to tariff their interLATA telecommunications services, and file sufficient cost support with those tariffs to

demonstrate that the affiliates' interLATA services cover all imputed access and other costs.

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby replies to the initial comments responding to the Notice of Proposed Rulemaking (NPRM) commencing this docket.[1]

I. INTRODUCTION

Although the weight of the initial comments reinforces MCI's view that the concerns raised in the NPRM generally reflect the language and intent of the separation and nondiscrimination safeguards in the new Sections 271 and 272 of the Communications Act of 1934,[2] the Bell Operating Companies (BOCs) and other local exchange carriers (LECs) assert that Section 272 is already so

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[1] FCC 96-308 (released July 18, 1996).

[2] In referring to a provision of the 1996 Act that amended the Communications Act of 1934, MCI will cite to the section number of the provision as codified as part of the Communications Act in Title 47 of the U.S. Code. Those provisions of the 1996 Act that did not amend the Communications Act, such as Section 601, will be referred to by their sections numbers in the 1996 Act.

clear and so detailed that no further interpretation or implementation is necessary.[3] They claim that the provisions of Section 272 are "self-executing," that the Commission has no authority to add to the safeguards created by those provisions and that the proposed regulations, by creating prohibitions that Congress rejected in passing the Telecommunications Act of 1996 (1996 Act),[4] would upset the balance struck by Congress.[5]

Any doubts about the need for this proceeding, however, are quickly erased by the LECs' statements as to what they think Section 272 requires or allows. As discussed below, the LECs' interpretations of Section 272 would effectively gut the separation and nondiscrimination safeguards mandated by Congress. Thus, it is the LECs that are trying to run away from the terms of the 1996 Act.[6]

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[3] See, e.g., Bell Atlantic Comments at 2-3; Pacific Telesis Comments at 1-3. The initial comments filed on August 15 will be referred to in this abbreviated manner.

[4] Pub. L. No. 104-104, 110 Stat. 56.

[5] USTA Comments at 1-5; SBC Communications Comments at 2-4; BellSouth Comments at 4-5.

[6] Moreover, the BOCs are incorrect as a matter of law in stating that the Commission may not promulgate regulations implementing a statutory scheme as detailed as the safeguards in Sections 271 and 272. For example, the cases cited by BellSouth for that proposition do not support it. Rather, they merely hold that an agency may not issue interpretive regulations that directly conflict with the statute they are supposedly interpreting. See American Petroleum Institute v. EPA, 52 F.3d 1113 (D.C. Cir. 1995); Ethyl Corp. v. EPA, 51 F.3d 1053 (D.C. Cir. 1995), cited in BellSouth's Comments at 4.

II. SCOPE OF THE COMMISSION'S AUTHORITY

A handful of parties -- for the most part, state regulatory agencies -- argue that the Commission's authority under Sections 271 and 272 does not supersede state authority over intrastate services. They assert that nothing in Section 272 overrides the reservation of state authority in Section 2(b) of the Act.[7]

As explained by MCI and other parties, however, that view ignores the various provisions in Sections 271 and 272 that specifically address inherently intrastate local services and the relationship of those provisions to the Act as a whole.[8] Moreover, the Commission is specifically given oversight authority with regard to the Section 272 safeguards by Section 271(d)(3), which sets out the procedures to be followed by the Commission in reviewing applications for in-region authority. Under Section 271(d)(3), the Commission must consider whether the requested authorization will be carried out in accordance with the requirements of Section 272.

Requirements in Sections 251 and 252 of the Act specifically pertaining to intrastate services and functions were cited by the Commission in deciding that those provisions apply to both interstate and intrastate services in its recent First Report and Order in the Interconnection proceeding (First Interconnection

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[7] 47 U.S.C. § 152(b). See Bell Atlantic Comments at 3; NARUC Comments at 5-7.

[8] See, e.g., CompTel Comments at 3-5.

Order).[9] Similarly, the specifically intrastate requirements of Sections 271 and 272, and their relationship to Sections 251 and 252 and the rest of the Act, compel the same jurisdictional result.[10]

III. THE SCOPE OF SECTION 272

A. Previously Authorized Services

Most of the parties approach the issue of previously authorized services in the manner advocated by MCI in its initial comments: Sections 271(f) and 272(a)(2)(B)(iii) grant a permanent exemption from the separation requirements of Section 272 to interLATA telecommunications services previously authorized by an order of the District Court overseeing the AT&T Consent Decree,[11] but previously authorized interLATA information services and manufacturing must come into compliance with the separation requirements within one year, as required by Section 272(h).[12] Any such interLATA telecommunications services thus exempted from the requirements of Section 272(b) are still required by Section

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[9] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-98; CC Docket No. 95-185, FCC 96-325 (released Aug. 8, 1996)(First Interconnection Order).

[10] See MCI Comments at 4-5; CompTel Comments at 3-5.

[11] United States v. Western Elec. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

[12] See MCI Comments at 7-9; Sprint Comments at 13-14; US West Comments at 15-18.

271(f) to conform to the requirements of the order of the Consent Decree Court authorizing such services, including any separate affiliate requirement.[13] Moreover, as AT&T points out, the Section 271(f) exemption lasts only as long as and to the extent that the interLATA telecommunications service is being provided pursuant to such Consent Decree Court order.[14]

Some of the BOCs, however, try to expand the role of Section 271(f) by reading it to grant a permanent exemption for previously authorized interLATA information services and manufacturing activities as well.[15] Where they go wrong is in overreading the comment in the Joint Conference Report that Section 271(f) was intended to "grandfather[] activities under existing waivers."[16] Such "grandfathering" does not enable BOCs to avoid all obligations under the Communications Act for previously authorized activities. Rather, it only provides that Sections 271(a) and 273 do not prohibit such activities. Thus, for example, previously authorized interLATA services do not have to satisfy the requirements of Section 271.

Section 271(f) says nothing, however, about the conditions

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[13] See Sprint Comments at 13 n. 10.

[14] AT&T Comments at 12 n. 12.

[15] See BellSouth Comments at 18-19; Ameritech Comments at 63-66; Pacific Telesis Comments at 5-6.

[16] Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 104-458, 104th Cong., 2d Sess. (1996) (Joint Conference Report) at 149.

imposed by Section 272, or, for that matter, Section 274. Section 272 thus applies fully to previously authorized activities. Since only previously authorized "interLATA telecommunications services" are exempted by Section 272(a)(2)(B)(iii) from the separation requirements of Section 272, previously authorized "[i]nterLATA information services"[17] and "manufacturing activities"[18] must come into compliance within one year.

B. Regulation of Incidental InterLATA Services

As might be expected, the LECs take the position that current regulations adequately implement the mandate of Section 271(h) that "[t]he Commission shall ensure that the provision of [incidental interLATA] services ... by a [BOC] or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market." They argue that the exemption of incidental interLATA services from the separation and nondiscrimination requirements of Section 272 also shields such services from any other new regulations.[19]

That approach, however, as explained in MCI's initial comments, ignores Section 271(h) as well as Section 601(c)(1) of the 1996 Act. MCI demonstrated in its initial comments the need

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[17] See Section 272(a)(2)(C).

[18] See Section 272(a)(2)(A).

[19] See, e.g., Pacific Telesis Comments at 6-7; USTA Comments at 10-11.

for a degree of separation, albeit less than the separation called for by Section 272, and nondiscrimination safeguards for this vital and fast-growing sector of telecommunications.[20] The LECs' simplistic approach does not address any of these considerations.

C. The Impact of BOC Mergers and Joint Ventures

Because of the possible ambiguity in the regulatory status of interLATA services provided by the merger partners -- e.g., out-of-region services for one partner might be in-region for the other, thus posing all of the risks raised by in-region services -- it is especially important that the Commission's regulations specifically take pending mergers and BOC joint ventures into account. Sprint discusses the manner in which the various separation and nondiscrimination safeguards should address pending mergers and joint ventures, and MCI endorses those proposals.[21]

D. InterLATA Information Services

In its initial comments, MCI supported the tentative conclusion in the NPRM that both in-region and out-of-region interLATA information services are subject to the separate affiliate and other requirements of Section 272, given the contrasting language in Sections 272(a)(2)(C), which addresses

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[20] See MCI Comments at 9-14.

[21] See Sprint Comments at 14-16. See also CompTel Comments at 11-13.

interLATA information services, and 272(a)(2)(B), which addresses interLATA telecommunications services and explicitly exempts out-of-region services.[22] BellSouth disagrees, basing its reading on Section 271(b), which, it maintains, exempts all out-of-region interLATA services -- both telecommunications and information services -- from the separation and other requirements of Section 272.[23]

There are several problems with that analysis. First, BellSouth's interpretation of "interLATA services" as encompassing both interLATA telecommunications and information services in Section 271(b) would mean that a BOC could not provide in-region interLATA information services until it had satisfied the requirements of Section 271, a reading that BellSouth would hardly embrace. Second, whether or not a BOC must satisfy the requirements of Section 271 in order to engage at all in an activity does not determine whether or not the separation and other requirements of Section 272 apply to that activity. The latter determination is set forth in Section 272(a)(2), which exempts out-of-region "interLATA telecommunications services" (subsection B(ii)) but not out-of-region "[i]nterLATA information services" (subsection C) from those requirements. BellSouth never mentions the contrasting language in those subsections of Section 272(a)(2).

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[22] See MCI Comments at 15, citing the NPRM at ¶ 41.

[23] BellSouth Comments at 20-23.

There also appears to be some dispute as to the criteria to be applied in determining whether an information service is "interLATA." The BOCs argue that the use of processing in another LATA from the end user does not make the service interLATA and that only where there is an interLATA transmission link, other than to a database or other processor, as a component of the service is the service interLATA.[24] Such a distinction is not only confusing but also contrary to the relevant case law.

Because the term "interLATA" was used in the AT&T Consent Decree, it seems logical to adopt the Consent Decree Court's usage in determining the scope of the phrase "interLATA information service." Accordingly, as AT&T points out, whenever interLATA transmission or interLATA access is a component of an information service, including situations in which such transmission links are used to enable end users to access computers in other LATAs, the service is interLATA, unless the end user supplies the interLATA link.[25] Characterizing such interLATA links to centrally located processors as "internal" to the service[26] or "transparent" to the end user[27] cannot alter the

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[24] See Bell Atlantic Comments at Exhibit 1, pp. 2-6; USTA Comments at 14-17; BellSouth Comments at 25; US West Comments at 10-11.

[25] AT&T Comments at 13-14, citing United States v. Western Electric Co., 907 F.2d 160, 163 (D.C. Cir. 1990), cert. denied, 498 U.S. 1109 (1991).

[26] US West Comments at 10.

[27] Pacific Telesis Comments at 11-12.

interLATA nature of the information service.

Pacific Telesis argues that the Department of Justice (DOJ) has adopted a contrary view and that any internal processing is irrelevant to the classification of a service as interLATA. The DOJ position to which Pacific Telesis refers, however, concerned switching and processing in connection with the provision of access for interLATA telecommunications services, not information services, and is thus irrelevant here.[28]

US West and Nynex raise one other issue related to the interLATA/intraLATA point, namely whether the use of an interLATA transmission link purchased from a BOC affiliate to obtain access to the affiliate's information service makes the information service an interLATA one if the interLATA transmission is purchased separately from the information service. They argue that it does not, since it should make no difference whether the end user separately purchases the BOC affiliate's interLATA service or a third party's service to obtain access.[29]

MCI would have no objection to such an interpretation as long as the interLATA transmission service were subject to the separation and other requirements of Section 272. Thus, for example, the interLATA transmission could not be considered an "incidental interLATA service," since if the interLATA transmission were a truly stand-alone service, not connected or

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[28] Id. at 10-11 & n. 11.

[29] US West Comments at 9-10; Nynex Comments at 43-44.

tied in any way to the affiliate's information service, it would not necessarily be used for the purposes listed in Section 271(g).

Moreover, the BOC affiliate's information service would have to be made available to users of other interexchange carriers' (IXCs') services at the same rates and on the same terms and conditions as it is to the BOC affiliate's interLATA telecommunications services customers, and the affiliate's interLATA telecommunications services, including the transmission links used to obtain access to the affiliate's information service, would have to be made available to users of other information services at the same rates and on the same terms and conditions as it is to the affiliate's own information service customers. Finally, since, as US West and Nynex point out, the separately purchased interLATA transmission link must be considered a stand-alone service, the BOC affiliate must have in-region authority under Section 271 in order to provide the interLATA link (at least for interLATA calls originating in the BOC's local service region).

Pacific Telesis argues that telemessaging does not constitute an information service covered by the requirements of Section 272, since telemessaging includes live operator services, which are not information services, and is subject to its own conditions imposed by Section 260.[30] As Pacific Telesis

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[30] See Pacific Telesis Comments at 16-17.

concedes, however, most of the aspects of telemessaging services, defined in Section 260(c), clearly do come within the definition of information services.[31] Moreover, although MCI also expressed doubt in its initial comments as to whether "live operator services used to record, transcribe, or relay messages (other than telecommunications relay services)" constitute information services, it is now clear, upon further reflection, that they do, following usage under the AT&T Consent Decree.[32] Thus, there is no definitional reason not to include all interLATA telemessaging services within the coverage of the Section 272 requirements applicable to interLATA information services.

Although there is some overlap between Sections 260 and 272, there is nothing in the structure of the 1996 Act to suggest that application of one necessarily displaces the other. As the Information Technology Association of America (ITAA) points out, both provisions can be given effect.[33] Thus, both Sections 260 and 272 should apply to telemessaging services.

Some of the LECs suggest that various aspects of the Commission's Computer II,[34] Computer III and ONA requirements for BOC enhanced services have been superseded by Section 272 or are

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[31] Id. at 16.

[32] See AT&T Comments at 12 n. 13, 14-15 & n. 17.

[33] ITAA Comments at 15.

[34] Long regulatory citations have been omitted in the interest of conserving space. MCI refers the Commission to its initial comments for all of the omitted citations.

"redundant" and no longer needed from a policy viewpoint.[35] Nynex goes even further and argues that the local exchange and access competition that will result from the 1996 Act will make certain aspects of the BOC enhanced services rules unnecessary.[36] As MCI and Sprint explained in their initial comments, however, the Computer III and ONA rules that are currently being applied to BOC information services, as inadequate as they are, must continue to be applied to intraLATA information services until final rules are promulgated in the pending Computer III Further Remand Proceedings.[37] Indeed, as BellSouth points out, those rules should continue to be applied to all information services not subject to the Section 272 requirements.[38]

MCI has demonstrated in the Computer III Further Remand Proceedings that all BOC information services should be provided through separate affiliates,[39] and the Ninth Circuit has twice

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[35] See Bell Atlantic Comments at Exhibit 1, pp. 5-6; USTA Comments at 15-16

[36] Nynex Comments at 46-48.

[37] Notice of Proposed Rulemaking, 10 FCC Rcd. 8360 (1995). See Sprint Comments at 18-19. USTA glibly asserts, at 16, that now that information services are addressed in Section 272, there is no longer any need for the Commission to conduct further proceedings in that docket. USTA does not explain, however, why Congressional action on interLATA information services obviates any further Commission concerns as to intraLATA information services or how those services will be addressed.

[38] BellSouth Comments at 27-28.

[39] See Comments of MCI Telecommunications Corporation, Computer III Further Remand Proceedings, CC Docket No. 95-20 (filed April 10, 1995).

reversed the Commission's decision to eliminate the structural separation requirement for such services.[40] Someday, the development of local competition might make structural separation or other BOC enhanced service rules unnecessary, but not in the foreseeable future. As MCI suggested in its initial comments in the instant proceeding, given the history of the Commission's unsuccessful attempts to do away with structural separation for BOC enhanced services, the most logical procedure at this juncture would be to fold the Computer III Further Remand Proceedings into this docket and establish a consistent set of rules for all BOC information services, both intraLATA and interLATA, in order to minimize gaming of the regulations on definitional pretexts.[41]

IV. THE STRUCTURAL SEPARATION REQUIREMENTS OF SECTION 272

The LECs argue that Section 272(b) is so clear and detailed that no further implementing regulations are necessary or authorized, warning that the Commission may not add to the factors determined to be relevant by Congress.[42] The LECs' argument begs the question, since it assumes that the types of regulations proposed in the NPRM would add to or modify the factors chosen by Congress. For example, it does not upset the

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[40] See California v. FCC, 905 F.2d 1217 (9th Cir. 1990); California v. FCC, 39 F.3d 919 (9th Cir. 1994).

[41] See also ITAA Comments at 11-12.

[42] See, e.g., Bell Atlantic Comments at 4.

balance chosen by Congress or introduce new factors not reflected in Section 272 for the Commission to determine what it means for the interLATA affiliate to "operate independently" from the BOC, as required by Section 272(b)(1). Past practice with such separation regimes as the Computer II rules and a comparison with the "operated independently" elements spelled out in Section 274(b) help to give meaning to Congress' requirement that the BOC and its affiliate operate independently.

A. *Section 272(b)(1)*

The LECs' main argument concerning the operate independently requirement is that it is "qualitative in nature;" it merely provides a background context as guidance for the proper interpretation of the remaining subsections of Section 272(b), which provide a detailed definition of that requirement. Since those other subsections provide a detailed inventory of the "operate independently" requirement, no further regulations are necessary.[43] Ameritech suggests that the Commission should not try to define the "operate independently" requirement until it has a Section 271 application before it based on a particular factual record.[44] Pacific Telesis argues that "operate independently" in Section 272(b)(1) cannot be interpreted similarly to "operated independently" in Section 274(b), given

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[43] Ameritech Comments at 37-39; Bell Atlantic Comments at 4-8; Pacific Telesis Comments at 17-24.

[44] Ameritech Comments at 37-39.

the greater degree of elaboration in the latter provision.[45]

The "operate independently" requirement mandates physical, operational and administrative separation of the BOC and its interLATA affiliate, along the lines of the Computer II rules governing "the relationship between the ... subsidiary and the ... [BOC]."[46] Those are not additional requirements; that is what "operate independently" means, according to the most relevant sources of meaning for that phrase in this context. Thus, a BOC interLATA affiliate "should have the same relationship to the BOC as does an unaffiliated entity."[47] Since the meaning of "operate independently" can be ascertained now, there is no need to wait for Section 271 applications to decide on a definition.

The structure of Section 272(b) reinforces this interpretation. Since the subsections of Section 272(b) are listed as parallel, equal provisions, principles of statutory construction require that each subsection, including (b)(1), be interpreted to mean something different from the others. The "operate independently" language therefore is not bound by the terms of subsections (b)(2)-(b)(5), as the LECs insist. By contrast, as MCI pointed out in its initial comments, the elements of the "operated independently" language in Section 274(b) are subsumed under that phrase and thus should be read

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[45] Pacific Telesis Comments at

[46] Computer II Order, 77 FCC 2d at 477-78.

[47] Sprint Comments at 5.

into that phrase wherever it appears in the 1996 Act.[48]

B. Section 272(b)(3)

MCI and other parties demonstrated in their initial comments that the requirement of separate officers, directors and employees in Section 272(b)(3) can only be fully implemented if all shared services are prohibited. The LECs argue that the requirement of separate employees is only that and does not affect the sharing of administrative service functions, either by the BOC or its affiliate performing services for the other or having those functions performed by other "service" affiliates within a Regional Bell Operating Company (RBOC) corporate structure. They point to the Computer II precedent, under which shared administrative services were permitted.[49] US West and Nynex are especially adamant that a BOC and its interLATA affiliate must be permitted to share support services performed on a corporate-wide basis in order for the affiliate to be able to function at all.[50]

The BOCs also present textual arguments. They assert that the various nondiscrimination requirements in Section 272 contemplate that the BOC will perform services for the

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[48] See Comm'r of Internal Revenue v. Lundy, 116 S.Ct. 647, 655 (1996)(identical terms used in related parts of the same act should be interpreted to have the same meaning)(cited in MCI's Comments at 26).

[49] Ameritech Comments at 40-45; Bell Atlantic Comments at 6-7; Pacific Telesis Comments at 21-23.

[50] US West Comments at 21-25; Nynex Comments at 20-33.

affiliate.[51] Ameritech and US West point out that Section 274(b)(7) specifically prohibits the hiring or training of personnel for the electronic publishing affiliate by the BOC, which should not have been necessary if the separate employee requirement in Section 274(b)(5)(A) necessarily implied such a prohibition.[52]

As MCI and other parties point out, however, shared services necessarily breach the separation of employees required by Section 272(b)(3). If services are shared, either by having one entity perform services for the other or by having a service affiliate perform services in common, the BOC and its affiliate will, in effect, be sharing employees. If other entities perform services for the affiliate, it will not need employees to that extent, making a mockery of the separate employees requirement. The costs of shared services will have to be allocated to the entity receiving the services, just as if shared employees had performed the services. This breach of the separate employee requirement also must be viewed in light of the independent operation requirement, which is also compromised by the sharing of services and the cost allocations and other indicia of integrated operations attendant thereto. As BellSouth recognizes, a primary purpose of the separation requirements is

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[51] Ameritech Comments at 41; Bell Atlantic Comments at 7 & n. 16; Pacific Telesis Comments at 23.

[52] Ameritech Comments at 42; US West Comments at 24.